UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

Case No.	CV 14-3747 PSG (MRWx)	Date	September 17, 2014
Title	Kristine M. Rodas v. Porsche Cars North America, Inc., *et al.*		

Present: The Honorable	Philip S. Gutierrez, United States District Judge

Wendy Hernandez	Not Reported
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):
Not Present	Not Present

Proceedings (In Chambers): **Order GRANTING IN PART and DENYING IN PART Defendant's Motion to Dismiss the Complaint**

Before the Court is Defendant Porsche Cars North America, Inc.'s ("PCNA" or "Defendant") motion to dismiss the Complaint. Dkt. # 9. After considering the arguments in the moving, opposing, and reply papers, the Court GRANTS the motion IN PART and DENIES the motion IN PART.

I. Background

On November 30, 2013, Roger W. Rodas ("Mr. Rodas"), died in a one-car crash in Santa Clarita, California, while driving his 2005 Porsche Carrera GT. *See Compl.* ¶ 10. The Carrera GT is an ultra-high-performance super-sports car that initially came into being as a proposal for a Le Mans racecar. *Id.* ¶ 13. It has high acceleration and speed capabilities which are due in part to its construction out of lightweight materials. *Id.* Mr. Rodas was a car enthusiast who owned between five and ten Porsches at any time and was an experienced racecar driver who had competed in at least twenty races, sometimes driving Porsches. *Id.* ¶ 8.

On the day of the crash, Mr. Rodas left a charity event in Santa Clarita driving a friend and colleague, Paul W. Walker IV, in Mr. Rodas' Carrera GT. *Id.* ¶ 10. Mr. Rodas had only driven a few hundred yards before the crash occurred. *Id.* After completing a right-hand curve, Mr. Rodas drove on a straight road at approximately 55 miles-per-hour for approximately 150 feet before the car went out of control and yawed clockwise off the right side of the road. *Id.* ¶ 11. The car hit a pole and three trees, broke in half, and caught fire. *Id.* ¶ 12. Both Mr. Rodas and Mr. Walker died in the crash. *Id.* ¶ 10.

Plaintiff Kristine M. Rodas ("Plaintiff") filed a Complaint, individually an on behalf of the estate of Mr. Rodas, against Defendant PCNA in state court on May 12, 2014 and PCNA removed the case shortly afterward, on May 15, 2014. Dkt. #1. Defendant moved to dismiss the Complaint in its entirety. Dkt. # 9. Plaintiff opposed the motion and Defendant replied. Dkt. #

17, 18.

Plaintiff alleges that the crash that killed Mr. Rodas was caused by failure of the suspension component in the right rear wheel area of the Carrera GT. *Id.* ¶ 14. Further, Plaintiff alleged that the crash would not have resulted in Mr. Rodas' death had the Carrera GT been equipped with additional safety features, specifically, a crash cage to protect the driver and passenger from impact and a racing fuel cell to prevent a fire in the event of a crash. *Id.* ¶ 15-16.

Plaintiff's Complaint asserts seven causes of action against PCNA arising out of this event: (1) breach of the implied warranty of merchantability, (2) breach of the implied warranty of fitness for a particular purpose, (3) violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL"), (4) violation of California's False Advertising Laws, Cal. Bus. & Prof. Code §§ 17500, *et seq.* ("FAL"), (5) violation of the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* ("CLRA"), (6) strict products liability, and (7) negligent products liability. Dkt. # 1. PCNA seeks to dismiss all claims. Dkt. #9.

II. Legal Standard

A. Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) tests whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When deciding a Rule 12(b)(6) motion, the court must accept the facts pleaded in the complaint as true, and construe them in the light most favorable to the plaintiff. *Faulkner v. ADT Sec. Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013); *Cousins v. Lockyer*, 568 F.3d 1063, 1067-68 (9th Cir. 2009). The court, however, is not required to accept "legal conclusions…cast in the form of factual allegations." *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981); see *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555.

After accepting all non-conclusory allegations as true and drawing all reasonable inferences in favor of the plaintiff, the court must determine whether the complaint alleges a plausible claim to relief. *See Iqbal*, 556 U.S. at 679-80. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged…The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* at 678 (citing *Twombly*, 550 U.S. at 556).

B. Rule 9(b)

Plaintiffs must plead allegations of fraud and those that "sound in fraud" with particularity. Fed. R. Civ. R. 9(b); *Vess v. Ciba-Geigy Corp. U.S.A.*, 317 F.3d 1097; 1103-05 (9th Cir. 2003). Conclusory allegations of fraud are insufficient. *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

A pleading satisfies Rule 9(b) when it is "specific enough to give defendants notice of the particular misconduct…so that they can defend against the charge and not just deny that they have done anything wrong." *Vess*, 317 F.3d at 1106 (internal quotations marks and citation omitted); *accord Moore*, 885 F.2d at 540 ("A pleading is sufficient under rule 9(b) if it identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations.") As a result, the plaintiff must plead the "who, what, when, where, and how" of the alleged fraud. *Vess*, 317 F.3d at 1106 (internal quotation marks and citation omitted). Further, if the plaintiff claims that a statement is false or misleading, "[t]he plaintiff must set forth *what* is false or misleading about a statement, and why it is false." *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994) (emphasis added).

III. Discussion

The pleading at issue in this motion is Plaintiff's first attempt to state claims against PCNA based on allegations regarding the November 30, 2013 crash that killed Mr. Rodas. PCNA moves to dismiss under Federal Rule of Procedure 12(b)(6). Dkt. # 9. The Court, in proceeding, will first address the sufficiency of allegations with respect to Plaintiff's implied warranty claims, then evaluate Plaintiff's claims for violations of the UCL, FAL, and CLRA, and lastly examine Plaintiff's products liability claims under strict liability and negligence.

A. Implied Warranty Claims

PCNA seeks to dismiss Plaintiff's claims for breach of the implied warranties of merchantability and of fitness for a particular purpose on the grounds that the claims are time-barred. PCNA alleges that the implied warranties have expired or, alternatively, the statute of limitations in which to bring implied warranty claims has run. *See Mot.* 12:12–13:9; Reply 4:21–6:14. Plaintiff does not identify whether she seeks relief for her implied warranty claims from California's Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1790 *et al.*, ("Song-Beverly Act") or the UCC. *Reply* 4:23-27. However, under either framework, the result is the same – Plaintiff's claims are time-barred because the statute of limitations on the implied warranty claims has run.

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The Song-Beverly Act is a strongly pro-consumer law that supplements the UCC to provide additional protection for purchasers of consumer goods. *Id.* at 1303-04. To the extent that the Song-Beverly Act "gives rights to buyers of consumer goods, it prevails over conflicting provisions of the Uniform Commercial Code." Cal. Civ. Code § 1790.3. The Song-Beverly Act provides that "in no event shall [an] implied warranty have a duration of…more than one year following the sale of new consumer goods to a retail buyer." *Id.* § 1791.1(c); *Mexia*, 174 Cal. App. 4th at 1304. This "duration provision" is not a statute of limitations restricting when Plaintiff can bring an action for breach; rather, it sets a window during which the breach must occur for it to be actionable. *See Mexia*, 174 Cal. App. 4th at 1304.

The statute of limitations for implied warranty claims under either the Song-Beverly Act or the UCC is governed by the UCC provisions. *Id.* at 1306 ("California courts have held that the statute of limitations for an action for breach of warranty under the Song-Beverly Act is governed by the same statute that governs the statute of limitations for warranties arising under the Uniform Commercial Code: section 2725"). The UCC establishes a four-year statute of limitations, stating that an action must be commenced "within four years after the cause of action has accrued." Cal. U. Com. Code, § 2725(1). "A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach." *Id.* § 2725(2).

For the statute of limitations issue, the salient question is when "breach" occurred. Under the Song-Beverly Act, Plaintiff's warranty claims are time-barred regardless of Plaintiff's characterization of when breach occurred because in order to state a claim under the Song-Beverly Act's "duration provision," the breach must have occurred within the first year of sale. Cal. Civ. Code § 1791.1(c). If Plaintiff satisfies this duration provision by alleging that breach occurred during the first year after sale of the 2005 Carrera GT, the four-year statute of limitations precludes her bringing an action on that breach in 2014.

Under the UCC, "breach of warranty occurs when tender is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered." Cal. U. Com. Code, § 2725(2). The exception does not apply in this case because the future performance exception is inapplicable to implied warranty claims. *See MacDonald v. Ford Motor Co.*, No. CV 13-2988 JST, 2014 WL 1340339, at *10-11 (N.D. Cal. March 31, 2014). Thus, for the implied warranty claims, breach occurred when tender was made by PCNA. The product at issue is a 2005 model vehicle that PCNA, as manufacturer, would have delivered for sale to consumers in 2004 or 2005, nearly ten years prior to the filing of Plaintiff's claims. *Compl.* ¶ 13. Accordingly, the statute of limitations has run on the implied warranty claims.

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The Court GRANTS PCNA's motion to dismiss Plaintiff's claims for breach of the implied warranties of merchantability and of fitness for a particular purpose because the statute of limitations has expired for those claims. The dismissal is granted with leave with to amend.

B. <u>UCL, FAL, and CLRA Claims</u>

i. *Adequacy Under Rule 9(b)*

PCNA contends that Plaintiff does not plead her UCL, FAL, and CLRA claims with sufficient particularity to satisfy Rule 9(b). *Mot.* 4:7-6:11. Plaintiff's statutory claims "sound in fraud" because Plaintiff alleges that PCNA engaged in conduct to mislead consumers regarding the safety of the 2005 Carrera GT; therefore, Plaintiff must plead those claims with particularity. *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (applying the Rule 9(b) pleading standard to CLRA and UCL claims where the plaintiff alleged an automobile manufacturer knowingly misrepresented the safety and reliability of certain vehicles to the public); *Priozzi v. Apple, Inc.*, 966 F.Supp.2d 909, 922-23 (requiring Rule 9(b) pleading for an FAL claim where the plaintiff alleged that the defendant misrepresented the security of its electronic mobile devices). Plaintiff does not dispute the pleading standard, but argues that she has sufficiently alleged fraud under the UCL, FAL, and CLRA in her Complaint. *Opp.* 16:8 - 17:4. The Court disagrees. Each statutory claim is only supported by general allegations of misrepresentation and misleading advertising, without any particularized detail about the sources or even content of PCNA's statements or images.

Plaintiff alleges that PCNA engaged in untrue or misleading advertising by "[r]epresenting to Plaintiff, the decedent, and the general public that the 2005 Porsche Carrera GT was safe, fit, and effective for human use," "[e]ngaging in advertising programs designed to create the image, impression and belief by consumers that the Carrera GT was safe for humans to operate," and "concealing" and "[p]urposefully downplaying and understating the dangers, safety risks, and injuries associated with the Carrera GT." *Compl.* ¶ 52. But Plaintiff stops there. She does not specify how Defendant conveyed this image of safeness, fitness, efficacy, and low risk of danger. Plaintiff does not relay quotations of statements found on labels, in printed materials, or in print, radio, online, or television ads. At one point, Plaintiff mentions that the misrepresentations included "statements made in Defendant's television, radio, and print advertising, websites, brochures" but she never ties a single statement to a particular advertisement or publication. *Id.* ¶ 58. Short of identifying statements, Plaintiff also does not describe public images of the vehicle that conveyed the alleged untrue and misleading representations. Plaintiff attributes one quoted statement about the model to "Porsche" generally (without specifying the speaker or where the statement was made) – "'Carrera GT is as close to a

racecar as we will ever get'" – but the statement is not a representation about the safety, fitness, efficacy, or riskiness of the vehicle, and Plaintiff never alleges that the statement is untrue or that Mr. Rodas ever relied on it in purchasing his Carrera GT. *Compl.* ¶ 13. Rule 9(b) requires that the plaintiff plead the "particular circumstances surrounding [the] representations" and Plaintiff's effort here falls well below that standard.

In *Kearns v. Ford Motor Co.*, 567 F.3d 1120, the Ninth Circuit upheld the trial court's dismissal of consumer fraud-based claims against a car manufacturer for alleged misrepresentations regarding Certified Pre-Owned ("CPO") vehicles because the plaintiff failed to specify "what the television advertisements or other sales material specifically stated[,]" "when he was exposed to them[,]" "which ones he found material[,]" and "which sales material he relied upon in making his decision to buy" a CPO vehicle. *Id.* at 1126. Even though the plaintiff in *Kearns* alleged that someone at the company specifically told him that CPO vehicles were the best used vehicles available because they were individually hand-picked and rigorously inspected, the Court found the Complaint lacking in specificity because he did not specify "who made this statement or when this statement was made." *Id.* Plaintiff's Complaint contains even less specificity than that in *Kearns* as to the "who, what, when, where, and how" of the alleged fraud such that PCNA is not on notice as to which of its statements and actions allegedly misled the decedent. *Vess*, 317 F.3d at 1106 (internal quotation marks and citation omitted). Accordingly, Plaintiff's claims under the UCL, FAL, and CLRA are DISMISSED, with leave to amend.

ii. *Notice Under the CLRA*

Defendant also argues for dismissal of the CLRA cause of action with prejudice because Plaintiff did not comply with the CLRA's requirement for pre-litigation notice of the statutory litigation. *Mot.* 9:7 – 10:2. As a prerequisite to seeking damages under the CLRA, a plaintiff is required to provide notice to the defendant of the alleged statutory violation and a demand to rectify the violation. Cal. Civ. Code § 1782(a). The manner of notice is specific. Plaintiff must provide notice at least 30 days prior to commencing an action and such notice must be in writing and sent by mail. *Id.* Plaintiff does not allege that she complied with these formal notice requirements. Failure to comply with the CLRA notice requirements warrants dismissal, but dismissal with prejudice is not mandatory. *See Morgan v. AT & T Wireless Services, Inc.*, 177 Cal. App. 4th 1235, 1260-61 (2009); *Doe 1 v. AOL LLC*, 719 F. Supp. 2d 1102, 1110-11 (N.D. Cal. 2010). The Court will allow Plaintiff to plead her CLRA claim after compliance with the notice provision.

C. Products Liability

Plaintiff alleges that three defects with Mr. Rodas' Carrera GT caused the injuries in this case: (1) failure of the suspension component, (2) absence of a crash cage, and (3) absence of racing fuel cell. Plaintiff argues that these alleged defects render PCNA liable on both strict liability and negligent products liability theories. The Court will address each theory in turn.

i. *Strict Liability*

"A manufacturer may be held strictly liable for placing a defective product on the market if the plaintiff's injury results from a reasonably foreseeable use of the product." *Saller v. Crown Cork & Seal Co., Inc.*, 187 Cal.App.4th 1220, 1231 (2010). California recognizes three types of products liability claims: manufacturing defects, design defects, and warning defects. *Id.* Although Plaintiff did not clearly do so in her Complaint, the Court will sort Plaintiff's alleged defects into the California's three claim categories for analysis.

a. *Manufacturing Defect*

A manufacturing defect exists if the product differs from the manufacturer's intended result or from other identical units of the same product, meaning that the design was appropriate but the manufacturing process deviated from the design. *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation*, 754 F.Supp.2d 1208, 1222 (C.D. Cal. 2010). The Complaint is unclear as to whether Plaintiff is alleging that the right rear suspension component in Mr. Rodas' Carrera GT failed due to a problem common to all 2005 Carrera GTs (suggesting a design defect) or due to a problem specific to Mr. Rodas' Carrera GT (suggesting a manufacturing defect). *See Compl.* ¶¶ 14, 31.

Under a manufacturing defect theory, Plaintiff has not pled sufficient facts to assert a strict products liability claim. To plead under this theory, "plaintiffs should '*identify/explain how* the [product] either deviated from [defendant's] intended result/design or *how* the [product] deviated from other seemingly identical [product] models.'" *In re Coordinated Latex Glove Litig.*, 99 Cal.App.4th 594, 613 (2002) (citing *Barker v. Lull Eng'g Co.*, 20 Cal.3d 413, 429 (1978)). There is no discussion in the Complaint about how the suspension component on Mr. Rodas' 2005 Carrera GT differed from either PCNA's design of the 2005 Carrera GT's suspension component generally or suspension components found in other 2005 Carrera GT models. Thus, Plaintiff has not sufficiently pled strict products liability on this theory. The

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Court GRANTS the motion to dismiss the strict products liability claim to the extent that it is premised on a manufacturing defect theory, with leave to amend.

b. *Design Defects*

Each of Plaintiff's alleged defects – the faulty suspension, the lack of a crash cage, and the improper fuel cell – can be cast as design defects. "Defective design may be established under two theories: (1) consumer expectations test, which asks whether the product performed as safely as an ordinary consumer would expect when used in an intended and reasonably foreseeable manner; or (2) the risk/benefit test, which asks whether the benefits of the challenged design outweigh the risk of danger inherent in the design." *In re Toyota Unintended Acceleration*, 754 F.Supp.2d at 1220; see also *Barker v. Lull Engineering Co.*, 20 Cal.3d 413, 429-30 (1978).

Plaintiff asserts that PCNA should have designed the Carrera GT with a crash cage and racing fuel cell. Plaintiff implicitly uses the consumer expectations test to allege liability. She suggests that because racecars inspired certain features of the Carrera GT, such as its lightweight build and high speed and acceleration capabilities, an ordinary consumer would expect the model to have special crash safety features in common with racecars, namely crash cages and racing fuel cells, so that the Carrera Gt would perform as safely in a crash as racecars would. *Compl.* ¶¶ 15-16, 30-31. On this theory, Plaintiff fails to sufficiently plead these design defects. Racecars are equipped with more extensive crash safety features than typical road cars because racecars operate at extremely high speeds and drivers routinely maneuver in risky ways, resulting in higher occurrences of both crashes generally and of severe crashes. The Carrera GT may have racecar-like *capabilities*, but it is a vehicle designed for typical road use, not high-risk racing, and the ordinary consumer recognizes that distinction between capability and intended use. *Compl.* ¶ 13. Accordingly, an ordinary consumer would not expect the vehicle to be equipped with crash safety features unique to racecar models used in actual racing and racecar-equivalent crashworthiness when the consumer buys a sports car for street use.

However, Plaintiff does sufficiently allege facts to support a strict liability design defect claim under the risks/benefits theory. To meet the general pleading standard, a plaintiff "should allege that the risks of the design outweigh the benefits, and then 'explain how the particular design of the [product] caused [plaintiff] harm.'" *Lucas v. City of Visalia*, 726 F.Supp.2d 1149, 1155 (C.D. Cal. 2010) (quoting *Altman v. HO Sports Co.*, 2009 WL 4163512, at *8 (E.D. Cal. Nov. 19, 2009) (dismissing the claim because plaintiff alleged baldly that a taser weapon suffered from a "design defect"). Plaintiff identifies the "lack of crash protection" and "improper fuel tank" as defective designs that rendered the Carrera GT "unsafe" and "expos[ed]

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the users…to serious injuries." *Compl.* ¶¶ 29, 31. Plaintiff states that "the risks inherent in the design of the Carrera GT outweigh significantly any benefits of such design." *Id.* ¶ 34. Plaintiff also alleges how the particular design caused harm in this case by explaining that a "properly functioning crash cage would have prevented the death[s]"…by preventing "intrusion into the passenger compartment," damage to the fuel tank, and the splitting of the vehicle in half. *Id.* ¶ 15. Moreover, the Plaintiff describes how a racing fuel cell keeps fuel from leaking from the tank in the event that it is impacted in a crash and alleges that the fire that resulted from the crash "would have been prevented had the vehicle been fitted with a proper racing fuel cell." *Id.* Accordingly, the Court DENIES the motion to dismiss the strict liability claim as it pertains to the crash cage and racing fuel cell on a design defect theory.

While Plaintiff's allegation regarding the failure of the suspension component is insufficiently pled under a manufacturing theory, it is sufficiently pled under a defective design theory. Using the reasonable expectations test, Plaintiff alleged that the car did not perform as safely as an ordinary consumer would expect when used in its intended manner when the car's suspension component spontaneously failed causing the car the spin out on the road when being driven at 55 miles-per-hour on a straight stretch of a public road. *Compl.* ¶¶ 11-12, 14, 30; *see In re Toyota Unintended Acceleration*, 754 F.Supp.2d at 1220. Thus, the Court DENIES the motion to dismiss the strict liability claim as it pertains to the suspension component on a design defect theory.

c. *Warning Defect*

Liability under a warning defect theory "requires that the manufacturer knows, or should have known, of the danger of the product at the time it is sold or distributed," [and that] "the plaintiff prove that defendant 'did not adequately warn of a particular risk that was known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution.'" *Saller*, 187 Cal.App.4th at 1238 (quoting *Anderson v. Owens-Corning Fiberglas Corp.*, 53 Cal.3d 987, 1002-03 (1991).

Plaintiff pleads the legal standards required for strict products liability under a warning defect theory, alleging that PCNA knew or should have known of the car's dangerous propensities at the time of design, manufacture, and distribution, but these "legal conclusions…cast in the form of factual allegations" fail the general pleading standard. *Compl.* ¶¶ 31, 32; *W. Mining Council*, 643 F.2d at 624. The only fact alleged in Plaintiff's Complaint to support PCNA's knowledge of the risks resulting from the Carrera GT's suspension, crash cage, and fuel cell design is that the "Carrera GT had been involved in multiple crashes in past years, with several ending in fatalities." *Compl.* ¶ 17. This exceedingly general statement about an

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unspecified number of crashes occurring over an unspecified time period and resulting in an unspecified number of fatalities does not even allege that any of these crashes resulted from suspension failures or that the fatalities would have been prevented by a crash cage or racing fuel cell. This statement could apply to any car model that has ever existed and does not support PCNA's awareness of a general safety risk with the Carrera GT, let alone risks associated with its suspension or crash safety precautions. Accordingly, the Court GRANTS the motion to dismiss the strict products liability claim to the extent that it is premised on a warning defect theory, with leave to amend.

ii. *Negligence*

To prevail on a negligence claim in California, a plaintiff must show that defendant owed her a legal duty, breached the duty, and that the breach was a proximate or legal cause of her injury. *Gonzalez v. Autoliv ASP, Inc.*, 154 Cal.App.4th 780, 793 (2007). The manufacturer of a product is "under a duty to exercise reasonable care in its design so that it can be safely used as intended by its buyer/consumer." *Id.*

Plaintiff pleads that PCNA, as manufacturer of the Carrera GT that Mr. Rodas owned and was driving, owed a duty of reasonable care to Mr. Rodas in the design and manufacture of that vehicle. *Compl.* ¶ 21. Plaintiff alleges that PCNA breached that duty of reasonable care by (a) designing, manufacturing, and failing to warn about a Carrera GT suspension component that was susceptible to sudden failure and (b) designing the model without the additional crash safety features of a crash cage and racing fuel cell, given the lightweight body and high acceleration and speed capabilities of model. *Id.* ¶ 23. Plaintiff also describes that this breach caused Plaintiff's injury because Mr. Rodas' Carrera GT crashed due to the suspension failure and he died due to the absence of a crash cage and racing fuel cell, which would have sheltered Mr. Rodas and prevented a fire. *Id.* ¶¶ 14-16, 24. The Complaint alleges facts supporting each element of negligence.

PCNA argues that Plaintiff's factual allegations regarding the suspension component failure are not sufficient to plead the element of breach of PCNA's duty of care under Federal Rule of Civil Procedure 8. *Mot.* 17:5-11. Pleading breach in a products liability context requires more than the bald assertion that a product is defective. *See Dilley v. C.R. Bard, Inc.*, No. CV 14-01795 ODW (ASx), 2014 WL 1338877, at *4 (C.D. Cal. April 3, 2014) (dismissing plaintiff's "bare assertion" that defendants' mesh plugs and patches possessed a defect in its design because the assertion "does not in any way identify the alleged design defect that plagues all PerFix plugs and patches"). In addition to identifying the defect, *In re Toyota Unintended Acceleration* suggests that the Complaint may need to allege the causes of the defect and

alternative designs. *See In re Toyota Unintended Acceleration*, 754 F.Supp.2d at 1223. At a minimum, plaintiff must plead how the product is defective. *See Cruz v. Sears*, No. CV 12-623 H (BGS), 2012 WL 2923323 (S.D. Cal January 18, 2012), at *2 (finding that plaintiff sufficiently alleged breach by stating that an automotive repair tool "fractured into two piece during normal use"). Here, Plaintiff's allegation of breach regarding the suspension defect falls below this minimum standard. Plaintiff identifies the location of the defect on the car – the right rear suspension – but simply states that it failed and does not explain how it failed. *Compl.* ¶ 14. Plaintiff does not specify whether the suspension system surged or stalled, whether a part broke, fell off, or jammed, or whether some other breakdown occurred. Technical precision is not required, but Plaintiff must describe the malfunction with some specificity beyond pointing to a part of the car and alleging that it failed.

IV. <u>Leave to Amend</u>

The Court generally grants leave to amend any dismissed claims unless it is clear that they could not be saved by any amendment. *See United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011); *Thinket Ink Info. Res., Inc. v. Sun Microsys., Inc.*, 368 F. 3d 1053, 1061 (9th Cir. 2004). The Ninth Circuit has instructed that the policy of giving leave "when justice so requires," as set forth in Federal Rule of Civil Procedure 15(a), "is to be applied with extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). In determining whether leave to amend is warranted, the Court considers: (1) a party's bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility; and (5) whether the plaintiff has previously amended its complaint. *See Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996).

Here, the Court GRANTS leave to amend on all dismissed causes of action because at least four of the five factors weigh in favor of granting leave to amend on each claim: there are no indications that Plaintiff is acting in bad faith; allowing Plaintiff to amend her pleading will not result in undue delay or prejudice PCNA; and Plaintiff has not previously amended her pleadings. Although amendment to the implied warranty causes of action may be futile in light of the statute of limitations bar, the Court still grants leave to amend on that issue given the weight of the other four factors.

V. <u>Conclusion</u>

For the reasons above, Defendant's motion to dismiss is GRANTED IN PART and DENIED IN PART.

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(1) Plaintiff's implied warranty claims are DISMISSED, with leave to amend.

(2) Plaintiff's claims under the UCL, FAL, and CLRA are DISMISSED, with leave to amend.

(3) Plaintiff's strict products liability claims are DISMISSED, with leave to amend, to the extent that they are premised on manufacturing or warning defect theories.

(4) Plaintiff's negligence products liability claim is DISMISSED, with leave to amend, to the extent that it is premised on the suspension component defect.

Defendant's motion is otherwise DENIED.

Plaintiff may file a Second Amended Complaint ("SAC") consistent with this opinion no later than **October 20, 2014.** If Plaintiff fails to file a SAC by that date, the claims that have been dismissed with leave to amend will be dismissed without leave to amend.

IT IS SO ORDERED.